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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

USCG-2004-19416-3

[CGD01-04-038]

RIN 1625-AA00, AA01, AA08

Safety Zone; UBS Trophy America's Cup Class Regatta, Rhode Island Sound and Narragansett Bay, Rhode Island

AGENCY: Coast Guard, DHS.

ACTION: Temporary Final Rule.

SUMMARY: The Coast Guard is establishing safety zones in a portion of Rhode Island Sound and the East Passage to Narragansett Bay, Rhode Island, from June 19 to 26, 2004, in conjunction with the UBS Trophy America's Cup Class regatta. This regulation is needed to provide for the safety of life on navigable waters, for the safety of the participating vessels (America's Cup Class 12 meter racing yachts), and for the safety of passing and spectator vessels. These safety zones are needed to restrict vessel traffic in portions of Rhode Island Sound and the East Passage to Narragansett Bay for short periods of time while UBS Trophy Races are actually underway.

DATES: This rule is effective from noon on June 19, 2004, to 5 p.m. on June 26, 2004.

ADDRESSES: Documents related to this preamble are available for inspection or copying at U.S. Coast Guard Marine Safety Office Providence, 20 Risho Avenue, E. Providence, RI, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Edward G. LeBlanc at Marine Safety Office Providence, (401) 435-2351.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b) (B), the Coast Guard finds that good cause exists for not publishing an NPRM. The exact parameters and design of the UBS Trophy America's Cup Class Regatta were confirmed, with Coast Guard assistance, only recently. Publishing an NPRM or delaying its effective date would be contrary to the public interest since prompt action is needed to protect participants, mariners, and the marine public from navigation hazards associated with the UBS Trophy America's Cup Regatta.

Discussion of Rule

The Coast Guard is establishing these safety zones to provide for the safety of vessels participating in the UBS Trophy America's Cup Class regatta, spectator craft, and other vessels, mariners, and waterways users.

For the first time since 1983, America's Cup Class (12

meter) yachts will participate in a series of competitive races for the UBS Trophy in waters off of Newport, Rhode Island, in Rhode Island Sound and the East Passage to Narragansett Bay. From the period of June 19-26, 2004, organizers will conduct two races per day, beginning at approximately 1:30 p.m. each day. Each race will last about three to four hours. Three areas within and adjacent to the East Passage to Narragansett Bay have been identified as potential race sites, with the actual site selected each day dependent on actual and anticipated weather, wind direction and speed, etc. The three potential racing areas within the safety zones, in order of preference for racing, are Rose Island to Castle Hill, South of Prudence Island to the Newport/Pell Bridge, and South of Brenton Reef. This regulation will provide for the safety of life and property on navigable waters in that they will prevent spectator and passing vessels from interfering with the organized regatta. Substantial vessel congestion is anticipated due to the large number of spectator and passing vessels, which poses a significant threat to the safety of life.

This regulation establishes two safety zone for the UBS Trophy America's Cup Class regatta. One safety zone includes all of the East Passage to Narragansett Bay from the COLREGS demarcation line to the south, to a latitude adjacent to Conanicut Point (at the northern tip of

Conanicut Island) to the north. A second safety zone includes a two-mile radius around a position south of Brenton Point at 71°-20.00'W, 41°-25.00'N

This zone is effective from noon on June 19, 2004, to 5 p.m. on June 26, 2004.

While UBS Trophy America's Cup Class regatta races are actually underway (about a three-to-four hour period each day beginning at approximately 1 p.m.) all vessels (except participating vessels) must remain at least 50 yards from any participating race vessel (marked with a UBS Trophy flag) and must remain at least 50 yards from the designated racecourse, unless authorized by the Coast Guard Captain of the Port, Providence, or her on-scene representative. The designated race course may change each day, and VHF radio broadcast on VHF-FM channels 16 and 21 will be made every 15 minutes beginning no later than 11 a.m. each day to notify the public of the race site.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of

Homeland Security (DHS).

The Coast Guard expects the economic impact of this rule to be so minimal that a full regulatory evaluation under paragraph 10e of the regulatory policies and procedures of DHS is unnecessary. This regulation involves primarily only a small area of Rhode Island Sound and the East Passage of Narragansett Bay. The safety zones would not close the East Passage to commercial traffic, as the event organizers and the Coast Guard are actively coordinating with commercial vessel operators to de-conflict traffic. The East Passage will remain open to vessel traffic at all times. The impact of this regulation will not be significant because vessel traffic can pass safely around affected areas of the East Passage by either transiting through the West Passage (which will remain open) of Narragansett Bay, or making pre-transit arrangements with the Coast Guard and/or the event organizers. Additionally, extensive advanced notifications will be made to the maritime community via Local Notice to Mariners, marine information broadcasts, local port safety committee meetings, area newspapers, and e-mail Marine Safety Information Bulletins. These advisories will afford large commercial traffic substantial advance notice to schedule around the event.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule may affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit Rhode Island Sound or the East Passage of Narragansett Bay from June 19-26, 2004, and particularly during that short period each day (about three to four hours per day) that a UBS Trophy America's Cup regatta race is actually underway.

This regulation would not have a significant economic impact on a substantial number of small entities for the following reasons. The regulation affecting navigation in Rhode Island Sound and the East Passage of Narragansett Bay would be in effect only from June 19-26, 2004, and particularly only during that short period each day (about

three or four hours per day) that a UBS Trophy America's Cup regatta race is actually underway. Recreational vessel traffic could pass safely around each designated safety zone through the West Passage to Narragansett Bay, or could coordinate passage through each safety zone with the U.S. Coast Guard. Before the effective period, we would issue maritime advisories widely available to users of the Bay, and this will allow large commercial traffic ample time to schedule around the event.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we offer to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. If your small business or organization would be affected by this rule and you have any questions concerning its provisions or options for compliance, please call Mr. Edward G. Leblanc at (401) 435-2351.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each

agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247).

Collection of Information

This regulation calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or

risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have analyzed this rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42

U.S.C. 4321-4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2-1, paragraph (34)(g), of the Instruction, from further environmental documentation. A final "Environmental Analysis Check List" and a final "Categorical Exclusion Determination" are available in the docket where indicated under ADDRESSES.

List of Subjects

33 CFR 165

Harbors, Marine safety, Navigation (water), Reports and record keeping requirements, and Waterways.

Temporary Regulation

For the reasons discussed in the preamble, the **Coast Guard** amends 33 CFR part 165 as follows:

PART 165--REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C 191, 195; 33 CFR 1.05-1(g), 6.04-1, 6.04-6, and 160.5; Pub L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. From noon on June 19, 2004 to 5 p.m. on June 26, 2004, add temporary section 165.T01-038 to read as follows:

S 165.T01-029 Safety Zone: Rhode Island Sound and East Passage, Narragansett Bay, UBS Trophy America's Cup Class Regatta

(a) Location: The following areas are established as Safety Zones:

(1) All waters within the East Passage of Narragansett Bay north of the COLREGS demarcation line, an east-west line between Brenton Point and Beavertail Light, and south of a line of latitude tangent to Conanicut Point on Conanicut Island at 41°34.4'N.

(2) All waters within a two mile radius of 71°20.00'W, 41°25.00'N.

(b) Effective Dates: These safety zones are effective from noon on June 19, 2004 to 5 p.m. on June 26, 2004.

(c) Regulations:

(1) The general regulations governing safety zones contained in 33 CFR 165.23 apply.

(2) No vessel may transit within 50 yards of the designated race course(s), or within 50 yards of participating vessels, within the UBS Trophy America's Cup Class Regatta safety zones without the express authorization of the Coast Guard Captain of the Port, Providence, or her on-scene representative. All persons and vessels shall comply with the instructions

of the Coast Guard Captain of the Port and the designated on-scene U.S. Coast Guard patrol personnel. These personnel include commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

Dated: 15 Jun 04

A handwritten signature in cursive script that reads "Mary E. Landry". The signature is written in dark ink and is positioned above the printed name and title.

Mary E. Landry
Captain, U.S. Coast Guard
Captain of the Port, Providence